



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

September 25, 1991

Mr. Joe Ramirez
Director, Materials Management
Capital METRO
2910 East Fifth Street
Austin, Texas 78702

OR91-445

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12637.

You have received a third party request for bid proposal materials relating to DAVE Transportation Services, Inc. (DAVE). Pursuant to section 7(c) of the act, we notified DAVE of the request. DAVE responded by submitting a brief advising us of its consent to the release of certain portions of the requested information and claiming exceptions to disclosure, specifically 3(a)(4) and 3(a)(10), as to other portions.

We have considered the exceptions DAVE claims and have reviewed the documents submitted to us. Previous open records decisions issued by this office resolve this request. Open Records Decision No. 541 (1990) at 5 held that "[o]nce the competitive bidding process has ceased and a contract has been awarded, section 3(a)(4) will not except from disclosure either information submitted with a bid or the contract itself." As you have informed us that the competitive bidding process engendering these materials has concluded, and the relevant contract has been awarded, DAVE may not properly invoke a section 3(a)(4) exception.

Section 3(a)(10) excepts from required public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." DAVE claims that portions of information contained in the proposal sections entitled "Other Contracts," "Start-Up

Activities Checklist," "Employment Policies," "Operator Training Program," and "Internal Report Forms" include trade secrets. We will first deal with DAVE's assertion of exception 3(a)(10) for the section entitled "Other Contracts."

In making trade secret determinations under section 3(a)(10), this office will accept a claim as valid if the claimant establishes a *prima facie* case for its assertion of trade secrets that is unrebutted *as a matter of law*. Open Records Decision No. 552 (1990) at 5. Whether a claimant makes a *prima facie* case depends on whether its arguments, as a whole, correspond to the criteria for trade secrets detailed in the Restatement of Torts and adopted by the Texas courts. *Id.* at 2-3 DAVE's argument for exception of the "Other Contracts" section is that the section can be seen as comprising a customer list, and that customer lists are trade secrets. However, Open Records Decision No. 494 (1988) clearly explains that not all customer lists are trade secrets; in order to receive trade secret protection a claimant must show how the customer list fits the trade secret criteria. DAVE has not made such a showing, and in its absence we cannot determine that the information in the "Other Contracts" section is a trade secret protected under section 3(a)(10).

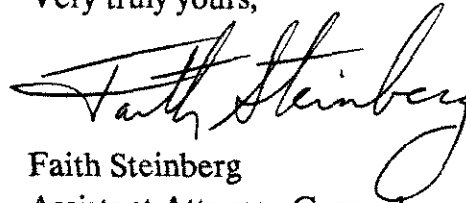
However, we believe that DAVE has made the requisite *prima facie* case for the portions of the other sections for which it claims trade secret protection. DAVE argues that these portions contain information developed over 19 years of its business operations and comprise the policies and procedural refinements that allow it to conduct its business in an efficient, cost-effective manner. Furthermore, it asserts that the information is not disseminated except to those employees required to have it. In so doing, it has asserted that the information was developed through an expenditure of considerable company time and effort, that it has great value to the company, and that the company has attempted to prevent its dissemination. These assertions are the heart of a trade secret determination. *See* Open Records Decision No. 552. The only rebuttal argument presented to us is the requestor of the information's conclusory assertion that the information is not proprietary. Accordingly, you may withhold from required public disclosure the portions of "Start-Up Activities Checklist," "Employment Policies," "Operator Training Program," and "Internal Report Forms" for which DAVE claims section 3(a)(10) (Exhibit C, pp. 1-19).

DAVE also claims Exhibit C, pp. 46-62 and 80-81, constitute financial information excepted from required public disclosure by section 3(a)(10). Open Records Decision No. 592 (1991) held that "[i]n order to be excepted from required public disclosure under section 3(a)(10) of the Open Records Act, 'commercial or financial information obtained from a person' *must be 'privileged or confidential'*

under the common or statutory law of Texas." Open Records Decision 592 at 9 (emphasis added). When an agency or company fails to provide relevant information regarding factors necessary to make a section 3(a)(10) claim, there is no basis to withhold information under section 3(a)(10). See Open Records Decision No. 402 (1983). Because DAVE has not demonstrated that the requested information is deemed privileged or confidential under the common or statutory law of Texas, you may not withhold the requested information DAVE claims is excepted under this aspect of section 3(a)(10).

Because prior decisions of this office and case law resolve your question, we are responding to your request with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-445.

Very truly yours,

A handwritten signature in cursive script, reading "Faith Steinberg". The signature is written in dark ink and is positioned above the printed name and title.

Faith Steinberg
Assistant Attorney General
Opinion Committee

FS/GK/lcd

Enclosures: Open Records Decision No. 592 (1991)

Ref.: ID# 12637

cc: Mr. Roy E. Glauthier
Vice President/Secretary
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